

AWARENESS OF GLOBAL LIMITATION REGIMES KEY TO CURBING WRECK-REMOVAL EXPOSURE

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As wreck-removal costs mount, Holman Fenwick Willan partners Rory Butler and Martin Dalby argue a recent court ruling shows that knowledge of different limitation regimes from around the world offer shipowners and insurers the best way to limit exposure

With the *COSTA CONCORDIA* fresh in our memory, the shipping industry is more acutely aware of the spiraling costs of casualties, particularly for wreck removal. The bill for the Giglio Island operation is now reported to be nearing \$1bn, with limitation of such liability a pressing concern for owners, their insurers and protection-and-indemnity (P&I) clubs.

In principle, limiting liability for wreck-removal costs, along with other liabilities, is possible, as it is included under Article 2(1)(d) of the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC). However, a number of leading maritime jurisdictions, including the UK,

exclude Article 2(1)(d) from national law, leaving such liability unlimited. Other states approach it differently, with a separate right to limit such liability requiring a separate - second - limitation fund. Some jurisdictions follow the convention by allowing such claims to be limited as part of a shipowner's single limitation fund.

One such example is the Isle of Man, making it a potentially attractive venue for an owner's limitation action.

In a judgement of the Manx Court of 7 January 2014, the court affirmed the right of the Manx-registered owners of the car carrier *BALTIC ACE* (built 2007) - which sank in 2012 following a North Sea collision with the containership *CORVUS J* (built 2003) - to limit in the Isle of Man as their domicile. This followed a challenge to the Manx proceedings by the *CORVUS J* owners, which contended that matters should proceed only in the Netherlands, where it is necessary to set up a second separate limitation fund for wreck removal.



The court built on its previous decision in the *Dominator* case (2009), which robustly held that a limitation action could be brought as of right in the Isle of Man by a shipowner domiciled there.

In an equally firm judgement, the Manx Court, applying Manx and English law principles, rejected the attempt to stay the Manx limitation action on the grounds that other limitation and liability proceedings were on foot in the Netherlands. It reaffirmed that the domicile of the registered owner is a more than sufficient jurisdictional link for a limitation claim, holding that the choice of limitation forum is a well-established owner's right and that it would be substantially unjust to deprive a limitation action claimant of the protection afforded by its domestic regime. It was inappropriate to stay the claim on forum non conveniens grounds for this reason and because limitation and liability involved separate issues, making it appropriate to determine each in different courts. The Manx Court also held that no stay of a limitation action can be made on the application of a single party and a fund can be set up by way of a letter of understanding (LOU) - as in England.

The result is that the *BALTIC ACE* can limit liability for all claims, including wreck removal, by setting up a single (Manx) limitation fund. The Dutch state has engaged contractors to remove the wreck and will have a recourse claim against the *BALTIC ACE* but this will be capped at the vessel's limitation fund, considerably lower than the wreck-removal costs.



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RORY BUTLER, PARTNER

The decision is likely to give a further boost to the Manx Register - now in the world's top 15 by tonnage, and ahead of Germany - and to Manx-registered owners. Other parties able to show a Manx "jurisdictional link" might also be able to benefit.

Knowledge of different limitation regimes available around the world is key to offering shipowners and insurers the best means of limiting exposure. Urgent action often has to be taken post-casualty to fix the best jurisdiction. A shipowner's choice of limitation forum will become still more significant in light of the scheduled increase to tonnage limits under the 1996 LLMC Protocol in June 2015.

Holman Fenwick Willan (Rory Butler (Partner), Martin Dalby (Partner), Michael Ritter (Associate)) acted for the owners of the *BALTIC ACE*, who were represented in the High Court of the Isle of Man by Simon Rainey QC of Quadrant Chambers, London, and Chris Arrowsmith of Simcocks Advocates, Douglas, Isle of Man.

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